THE ALIEN TORT STATUTE & THE CONTEMPORARY INTERNATIONAL LEGAL ORDER: IS THE RETENTION OF THE PRESUMPTION AGAINST EXTRATERRITORIALITY JUSTIFIED?

ALREEM KAMAL*

I. INTRODUCTION

For an act of Congress consisting of a single sentence, the Alien Tort Statute (ATS) has generated a considerable amount of controversy. The statute in its modern form provides: "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."[1] Since its revitalization in the 1980s,[2] the ATS has paved the way for claims from foreign nationals seeking to hold government personnel or corporations accountable for their violations of international human rights law. In *Filártiga v. Peña-Irala*, the Second Circuit adopted an approach to the ATS resembling universal jurisdiction, enabling the statute's use to support civil claims based on

* Alreem Kamal holds an LL.M. in International Legal Studies from New York University School of Law, where she was a Graduate Editor of the NYU Journal of International Law & Politics, and an LL.M. in Public International Law from Queen Mary University of London. She is currently an NYU International Finance & Development Fellow at the World Bank's Legal Vice Presidency, Operations Policy Group. She thanks her colleagues at the Journal for their comments and revisions.

1. 28 U.S.C. § 1350.

2. *See* Filártiga v. Peña-Irala, 630 F.2d 876 (2d Cir. 1980) (recognizing federal district courts' jurisdiction over civil claims under the ATS).

the extraterritorial acts of a foreign defendant against a foreign national. As the Court averred, "[i]ndeed . . . the torturer has become like the pirate and slave trader before him *hostis humani generis*, an enemy of all mankind."[3] Cases brought under the ATS since, however, have not been considered through the same progressivist lens.

In 2013, the U.S. Supreme Court held in *Kiobel v. Royal Dutch Petroleum Co.* that "the presumption against extraterritoriality applies to claims under the ATS, and nothing in the statute rebuts that presumption,"[4] appreciably limiting the extent of the statute's utility to foreign nationals seeking civil redress in the United States. The presumption against extraterritoriality has been subsequently applied in later ATS cases,[5] most recently in *Nestlé USA, Inc. v. Doe*.[6] Far from being a contemporary device, the presumption has been described as an "outgrowth" of the *Charming Betsy* canon,[7] established in *Murray v. The Schooner Charming Betsy* in which the Supreme Court stated that "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains . . . ."[8] As the law of nations at that time largely proscribed prescriptive and other forms of jurisdiction beyond a state's territorial bounds (with the exception of piracy), applying the presumption to acts of Congress served to preserve the United States' compliance with international law. As the international legal landscape transformed after World War II, eventually permitting states to legislate with extraterritorial effect and exercise enforcement jurisdiction, U.S. courts have nevertheless continued to apply the presumption against extraterritoriality to a range of statutes,[9] albeit by invoking justifications unrelated to a desire to abide by international norms. The ratio-

3. *Id.* at 890.

4. Kiobel v. Royal Dutch Petroleum Co., 569 U.S. 108, 124 (2013).

5. *See, e.g.*, Jesner v. Arab Bank, PLC, 138 S. Ct. 1386 (2018) (concluding that foreign corporations are not subject to liability under the ATS).

6. Nestlé USA, Inc v. Doe, 593 S. Ct. 1931 (2021) (applying the presumption against extraterritoriality to reject claims of child slavery in the Ivory Coast by Nestle).

7. Anthony J. Colangelo, *A Unified Approach to Extraterritoriality*, 97 VA. L. REV. 1019, 1060 (2011).

8. Murray v. The Schooner Charming Betsy, 6 U.S. 64, 118 (1804).

9. *See, e.g.*, Morrison v. Nat'l Austl. Bank, 561 U.S. 247 (2010) (applying the presumption against extraterritoriality to the Securities and Exchange Act of 1934); RJR Nabisco, Inc. v. European Cmty., 579 U.S. 325 (2016) (ap-

nale underpinning the interpretive principle has thus shifted since the Court's pronouncement in *Charming Betsy*, rendering the justifiability of its application to the ATS questionable.

This comment examines whether the retention of the presumption against extraterritoriality in relation to the ATS is justified. The scope of the inquiry will be limited to violations of international law which amount to crimes within the scope of universal jurisdiction,[10] as well as acts by U.S. nationals or corporations which are not subject to the latter principle but nevertheless amount to human rights violations. This is to assuage valid concerns pertaining to the legality under international law of the exercise of jurisdiction by domestic courts over foreign nationals for conduct not amounting to genocide, crimes against humanity, war crimes, or torture, i.e., the international crimes considered subject to universal jurisdiction.[11] As regards the latter, it is well-established that states have the primary responsibility to hold their nationals to account for violations of international law.[12]

II. The Purpose & History Behind the ATS

In 1789, the United States was a fledgling nation which sought to avoid strife with other nations but was facing considerable difficulty in fulfilling its obligations under the law of nations.[13] This corpus of law, otherwise known as customary international law, imposed a duty on states to redress certain violations thereof, even when perpetrated by private persons. Failure to do so would have attributed the conduct of such individuals to the United States itself, thereby potentially em-

---

plying the presumption against extraterritoriality to the Racketeer Influenced and Corrupt Organizations Act).

10. *See generally* Amnesty Int'l, Universal Jurisdiction: A Preliminary Survey of Legislation Around the World 1 (2011), https://www.amnesty.org/en/wp-content/uploads/2021/06/ior530042011en.pdf (describing the crimes subject to universal jurisdiction).

11. *See* Part III.

12. *Id.*

13. *See generally* Anthony J. Bellia Jr. & Bradford R. Clark, *The Alien Tort Statute and the Law of Nations*, 78 U. Chi. L. Rev. 445 (2011) (describing the frequent crimes committed against foreign nationals by American citizens in the post-Revolutionary War period).

broiling the new republic in international controversy.[14] Among the gravest of consequences ensuing from such liability under international law was war with offended nations, who would have regarded omissions of this kind by the United States as a *causa justa* for aggression.[15] Concerned about its ability to enforce the law of nations and avoid international discord, the federal government enacted the ATS, providing a forum for federal courts to hear such claims and avert the foreign relations repercussions the United States could have faced otherwise.[16]

The fact that the U.S. Supreme Court in *Nestlé* questioned whether the ATS applied to the conduct of American corporations abroad[17] reflects a sharp departure from the early understandings of the ATS and its intended aims. Applying the presumption against extraterritoriality to the statute would effectively prevent the United States from providing redress to nonnationals injured by American nationals on the territory of another sovereign.

III. THE *CHARMING BETSY* CANON & THE EVOLUTION OF INTERNATIONAL LAW

The relationship between the *Charming Betsy* canon and the presumption against extraterritoriality is critical to determining the latter's validity vis-à-vis the ATS. As William Dodge illustrates, "[t]he presumption against extraterritoriality was born from the marriage of the *Charming Betsy* canon . . . and an international law rule that jurisdiction was generally territorial."[18]

In *Murray v. The Schooner Charming Betsy*, the Supreme Court held that U.S. legislation did not apply to a property

---

14. EMMERICH DE VATTEL, THE LAW OF NATIONS, OR PRINCIPLES OF THE LAW OF NATURE, APPLIED TO THE CONDUCT AND AFFAIRS OF NATIONS AND SOVEREIGNS 163 (Joseph Chitty ed., 1844) (1758).

15. For "just war" theories, see generally IAN BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES (1963).

16. *See* STEPHEN P. MULLIGAN, CONG. RSCH SERV., R44947, THE ALIEN TORT STATUTE: A PRIMER 5 (2022) (describing an incident in which the French ambassador was assaulted, and an incident where police arrested a domestic servant of the Dutch ambassador).

17. *See* Nestlé USA, Inc. v. Doe, 593 S. Ct. 1931 (2021).

18. William S. Dodge, *Morrison's Effects Test*, 40 SW. L. REV. 687, 687 (2011).

claim over a vessel sold on an island under Danish control to a U.S. citizen sailing under the Danish flag.[19] The Court pronounced that "[a]n act of Congress ought never to be construed to violate the law of nations if any other possible construction remains . . . "[20] Of course, to have legislated with extraterritorial effect would have been a violation of the law of nations at the time, as well as core principles pertaining to sovereignty and the equality of nations.[21]

The presumption against extraterritoriality is thus rooted in concerns regarding the maintenance of U.S. compliance with international law. This led to an unequivocal commitment by the Supreme Court to upholding the canon in the centuries that followed, with little regard for whether its original basis continues to sustain it. The presumption was further strengthened in *Morrison v. Natl. Austl. Bank*, in which the Supreme Court held that "[w]hen a statute gives no clear indication of an extraterritorial application, it has none."[22]

In the two centuries since the formulation of the *Charming Betsy* canon, international law has experienced profound changes of considerable import and consequence, such that extending the reach of certain statutes to foreign territories no longer constitutes an offense to international legal principles. The following section surveys, in a non-exhaustive manner, several key developments in treaty and custom related to extraterritorial jurisdiction.

A. *Contemporary International Law & Extraterritorial Jurisdiction*

The international legal order established in the aftermath of World War II transformed the arena of international relations. A fractured world was made cognizant of the grave threats to international peace and security that certain conduct posed, paving the way for the development of a set of peremptory norms from which there can be no derogation, which include the prohibition of genocide, crimes against hu-

19. *Murray v. The Schooner Charming Betsy*, 6 U.S. 64 (1804).

20. *Id.* at 118.

21. *See* Krzysztof Zalucki, *Extraterritorial Jurisdiction in International Law*, 17 INT. COMM. L. REV. 403 (2015) (describing principles of international law which limit extraterritorial jurisdiction).

22. Morrison v. Nat'l Austl. Bank, 561 U.S. 247, 248 (2010).

manity, war crimes, torture, and slavery. Attached to these *jus cogens* norms are obligations *erga omnes*, or "towards all", which involve the duty of states to respond to breaches of such norms, the idea being that such violations are of international concern regardless of where they are perpetrated. A key consequence of this evolution has been the rewriting of age-old rules on extraterritorial jurisdiction in international law[23] to permit, and in some cases require, states to legislate with respect to conduct that occurred extraterritorially.

For instance, the penal sanctions provisions in the Geneva Conventions impose a duty on parties thereto to "enact any legislation necessary to provide effective penal sanctions" for individuals responsible for grave breaches as defined in the Conventions.[24]24 The provision further obliges parties to exercise jurisdiction over such conduct regardless of the nationality of the offenders. Overall, the provision evinces support for extraterritorial legislation and adjudication. Similarly, the Convention Against Torture imposes an obligation on parties to take measures to establish their jurisdiction over offences under the treaty in cases where, *inter alia*, the alleged offender is a national of the state party[25], reflecting a basic rule of international law that states are responsible for the conduct of their nationals regardless of the location of said conduct, and where the victim is a national of the state party,[26] reflecting the accepted head of jurisdiction of passive personality.[27] The Convention also requires parties to take measures to establish jurisdiction over offences where the alleged perpetrator is present in their territory,[28] further evidencing the acceptance in contemporary international law of extraterritorial jurisdiction. The commentary to the United Nations Guiding Principles on

---

23. *See generally* Menno T. Kamminga, *Extraterritoriality*, OXFORD PUB. INT'L LAW (2020), https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1040 (describing the development of the international legal approach to the legitimacy of extraterritoriality).

24. *See, e.g.*, Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 146, Aug. 12 1949, 75 U.N.T.S. 287.

25. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 5(1)(b), Dec. 10 1984, 85 U.N.T.S. 1465 [hereinafter UNCAT].

26. *Id.* at art. 5(1)(c).

27. *See* Vanni E. Treves, *Jurisdictional Aspects of the Eichmann Case*, 47 MINN. L. REV. 557, 589 (1963) (outlining the passive personality principle).

28. UNCAT, *supra* note 25, at art. 5(2).

Business and Human Rights provides that states are not prohibited from regulating the extraterritorial activities of businesses domiciled in their territory, provided that there is a recognized jurisdictional basis.[29] It further affirmed that some human rights treaty bodies even recommend that states take such action.[30]

Undoubtedly the paradigmatic example of the sweeping shift in international legal rules on extraterritoriality is the revolutionary concept of universal jurisdiction, which can be defined as prescriptive jurisdiction over specific international crimes irrespective of the place of commission, the nationality of the offender or victim, or any other recognized ground of jurisdiction in international law.[31] While politically contested, universal jurisdiction's legal basis is well-established.[32]32

If international law no longer provides the ground on which to premise the presumption against extraterritoriality in the United States, it is not clear what does. In *EEOC v. Arabian Am. Oil Co.*, the Supreme Court expressed what appears to be one of the core concerns in this context: that the presumption "serves to protect against unintended clashes between our laws and those of other nations, which could result in international discord . . . "[33] However, because international law supplies the applicable law pertaining to both substantive norms and jurisdictional rules upon which states have agreed to be bound, the risks of U.S. law conflicting with foreign law and jurisdictional overreach are effectively eliminated.[34] The ATS is thus merely a jurisdictional statute acting as a "vehicle for the enforcement of universally applicable international norms."[35]

---

29. U.N. Off. of the High Comm'r for Hum. Rts., Guiding Principles of Bus. and Hum. Rts., U.N. Doc. HR/PUB/11/04, at 4 (2011).

30. *Id.*

31. Roger O'Keefe, *Universal Jurisdiction: Clarifying the Basic Concept*, 2 J. INT'L CRIM. JUST. 735, 745 (2004).

32. *See, e.g.,* Kenneth Randall, *Universal Jurisdiction Under International Law*, 66 TEX. L. REV. 785 (1988) (discussing universal jurisdiction's legal basis under conventional and customary international law).

33. EEOC v. Arabian Am. Oil Co., 499 U.S. 244, 248 (1991).

34. Colangelo, *supra* note 7, at 1072.

35. *Id.* at 1088.

IV. U.S. Federal Courts as Global Forums: The Prudence of Abandoning the Presumption

In light of oft-cited concerns regarding the foreign relations implications of allowing extraterritorial claims under the ATS, the wisdom of arguing for the abandonment of the presumption against extraterritoriality for ATS claims must be assessed. Several issues merit exploring.

The first relates to the doctrine of *forum non conveniens*, under which judges are permitted to decline jurisdiction over cases they deem would be better heard in foreign courts. In most cases, however, foreign litigants will have sought damages under the ATS precisely because the courts of the state in which the torts took place are unable or unwilling to provide a remedy. The nature of the international law violations in question demonstrates the invalidity of *forum non conveniens* in this context, as well as the sense in abandoning the presumption vis-à-vis the ATS. Accordingly, the Canadian Supreme Court held in *Nevsun Resources Ltd. v. Araya*, that "deference accorded by comity to foreign legal systems 'ends where clear violations of international law and fundamental human rights begin'".[36] In concordance with contemporary international legal principles, the Second Circuit averred in *Wiwa v. Royal Dutch Petroleum Co.*, both that the international crime of torture committed by state officials in a foreign nation is "our business,"[37] and that "[i]f in cases of torture . . . our courts exercise their jurisdiction conferred by the [ATS] only for as long as it takes to dismiss the case for *forum non conveniens*, we will have done little to enforce the standards of the law of nations."[38]

The second issue is the unfounded claim that the retention of the presumption to the ATS aligns the United States with the practice of other nations with respect to universal jurisdiction.[39]39 *Pointing to the curtailing of universal jurisdiction*

36. Nevsun Res. Ltd. v. Araya, 2020 S.C.C. 5, para. 50 (Can.).

37. Wiwa v. Royal Dutch Petroleum Co., 226 F.3d 88, 106 (2d Cir. 2000).

38. *Id.*

39. Eugene Kontorovich, *Kiobel Surprise: Unexpected by Scholars but Consistent with International Trends*, 89 Notre Dame L. Rev. 1671, 1693 (2014) (contending that the rejection of universal jurisdiction suits under the ATS bears "strong parallels" with global trends).

legislation in states which famously championed the doctrine[40], Kontorovich insists that the rejection of extraterritoriality by the U.S. Supreme Court "fits with, and builds on, this international trend."[41] However, this conceptualization of the global trajectory of universal jurisdiction is largely unsubstantiated.

First, Kontorovich's account is riddled with misconceptions. The "trend" in restricting universal jurisdiction among some European states that Kontorovich identifies relates not to the geographic scope of the alleged crimes, but rather to the nationality of the victims and offenders, as well as the latter's presence or residence in the forum state.[42] The applicability of the legislation to extraterritorial conduct, however, has been left untouched.[43]

Further, the exercise of universal jurisdiction, in addition to active personal jurisdiction over private citizens and business enterprises, has been steadily on the rise. States around the world, including but not limited to Germany,[44] Argentina,[45] and Sweden,[46] have been actively involved in exercising jurisdiction over grave human rights violations committed on

---

40. *Id.* at 1682–85 (citing legislative amendments in Belgium and Spain restricting the reach of universal jurisdiction statutes).

41. Eugene Kontorovich, *A New Take on Kiobel: Putting ATS in Line with International Practice and Other Statutes*, WASH. POST (May 16, 2014), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/05/16/kiobel-put-the-ats-in-line-with-international-practice-and-other-statutes/.

42. Wolfgang Kaleck, *From Pinochet to Rumsfeld: Universal Jurisdiction in Europe 1998-2008*, 30 MICH. J. INT'L L. 927, 931-61 (2009) (outlining the universal jurisdiction practice of a number of European states and discussing the presence requirement in respective European universal jurisdiction legislation); Claudia Jimenez, *Combating Impunity for International Crimes in Spain: from the Prosecution of Pinochet to the Indictment of Garzon*, (Institut Català Internacional per la Pau Barcelona, Working Paper No. 2011/1), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2033068 (detailing the legislative history of universal jurisdiction in Spain, culminating in the imposition of nationality and presence requirements).

43. *See, e.g.*, Organic Law 1/2014 art. 23(4) (B.O.E. 2014, 63) (Spain) (retaining the ability to prosecute individuals for international crimes committed outside Spanish territory).

44. Wolfgang Kaleck & Patrick Kroker, *Syrian Torture Investigations in Germany and Beyond: Breathing New Life into Universal Jurisdiction in Europe?*, 16 J. INT'L CRIM. JUST. 165 (2018) (analyzing the use of German universal jurisdiction legislation for international crimes committed in Syria).

45. *Universal Jurisdiction Case in Argentina: An Important Decision for the Rohingyas*, TRIAL INT'L (Aug. 12, 2021), https://trialinternational.org/latest-post/universal-jurisdiction-case-in-argentina-an-important-decision-for-the-

foreign territory, against both state and non-state actors alike,[47] including multinational corporations.[48]

The U.S. Supreme Court itself displays an alarming nescience with regard to both international law generally and universal jurisdiction specifically. This is accurately captured in *Kiobel*, wherein the Court scoffed that "accepting petitioners' view would imply that other nations . . . could hale our citizens into their courts for alleged violations of the law of nations occurring in the United States, or anywhere else in the world."[49] This is, however, exactly what international law provides for with respect to its gravest violations. The Court's ignorance is lamentable inasmuch as it has sought to model its approach to the ATS, in part, on the basis of a misconception of what constitutes acceptable practice under international law.

Lastly, and perhaps most importantly, abandoning the presumption would empower the United States to fulfil its obligations under international law. That states are under an obligation to hold their own nationals to account for breaches of international human rights, criminal, and humanitarian law is a well-established principle.[50] Further, pursuant to the doc-

---

rohingyas/ (reporting on an upcoming appeal to a dismissal of a complaint filed in Argentina on behalf of Rohingya victims in Myanmar).

46. OPEN SOC'Y JUST. INITIATIVE, UNIVERSAL JURISDICTION IN SWEDEN: VICTIMS OF SYRIA'S CHEMICAL WEAPONS ATTACKS DEMAND JUSTICE 1 (2021), https://www.justiceinitiative.org/uploads/c3cda961-388f-4d50-b8b7-e28e5598d1e2/faq_chemical-weapons-criminal-complaints-in-sweden_04192021.pdf (describing complaints brought in Sweden regarding chemical weapons attacks in Syria).

47. Maximo Langer & Mackenzie Eason, *The Quiet Expansion of Universal Jurisdiction*, 30 EUR. J. INT'L L. 779, 781 (2019) (detailing the growth of universal jurisdiction trials despite a perception of decline).

48. *See, e.g.*, Nikolaj Skydsgaard & Jacob Gronholt-Pedersen, *Danish Fuel Trader Convicted over Exports to War-torn Syria*, REUTERS (Dec. 14, 2021), https://www.reuters.com/world/europe/danish-fuel-supplier-ceo-convicted-over-jet-fuel-exports-syria-2021-12-14/ (reporting on a conviction of a Dutch company for selling jet fuel to Syria in violation of sanctions).

49. Kiobel v. Royal Dutch Petroleum Co., 569 U.S. 108, 124 (2013).

50. *See, e.g.*, *Rule 149: Responsibility for Violations of International Humanitarian Law*, INT'L COMMITTEE OF THE RED CROSS, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule149 (last visited Mar. 25, 2022) ("A state is responsible for violations of international humanitarian law attributable to it . . . ."); Danwood Mzikenge Chirwa, *The Doctrine of State Responsibility as a Potential Means of Holding Private Actors Accountable for Human*

trines of *jus cogens* and *erga omnes*, states are under an obligation to respond to breaches of peremptory norms, irrespective of the place of their commission or the nationality of the perpetrator.[51] The agreed upon rationale underlying these doctrines is that flagrant breaches of core international norms undermine the stability of the international legal system, thereby affecting all states. Allowing extraterritorial claims under the ATS enables the United States to participate in the enforcement of norms of central importance to the stability of the modern international order it played a leading role in creating. In this sense, "duty ultimately reinforces interest."[52]

In addition to the legal imperative, a political argument can also be made in favor of abandoning the presumption against extraterritoriality. As a self-proclaimed "moral lead[er] on the global stage"[53], it is in the United States' interest to lend its courts to the endeavor of adjudicating violations of international human rights law. This would ostensibly vindicate its claimed global leadership role[54]54 and bolster its foreign policy goals, at the forefront of which is purportedly the protection of human rights.[55]55

V. Conclusion

International law has long been treated as a contentious matter in legal and political discourse in the United States. Whether it is the perceived friction between its norms and the U.S. constitution, or indignation to its imposition of con-

---

Rights, 5 Melb. J. Int'l L. 1 (2004) (providing an overview of the doctrine of state responsibility).

51. *See* M. Cherif Bassiouni, *International Crimes:* Jus Cogens *and* Obligatio Erga Omnes, 59 L. & Contemp. Probs. 63, 65 (1996) (contending that *jus cogens* crimes impose upon states the *obligatio erga omnes* to punish perpetrators).

52. Anne-Marie Burley, *The Alien Tort Statute and the Judiciary Act of 1789: A Badge of Honor*, 83 Am. J. Int'l L. 461, 493 (1989).

53. *A Proclamation on Human Rights Day and Human Rights Week*, The White House (Dec. 9, 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/12/09/a-proclamation-on-human-rights-day-and-human-rights-week-2021/.

54. Walter Russel Mead, *American Global Leadership Is In Retreat*, Wall St. J. (Sept. 13, 2021), https://www.wsj.com/articles/internationalist-globalist-liberal-world-order-crumbling-foreign-policy-national-security-11631568231.

55. *See A Proclamation on Human Rights Day and Human Rights Week*, *supra* note 53 (proclaiming December 10, 2021 as "Human Rights Day").

straints on state conduct, international law has been viewed with great skepticism by some, if not aversion. This attitude has manifested in various ways, including the judicial interpretation of statutes which by definition engage the normative body. As this comment has sought to demonstrate, neither international law nor U.S. foreign relations law justify the retention of the presumption against extraterritoriality to the ATS. The canon traditionally employed in this respect no longer provides a ground on which to restrict claims arising under the statute to acts committed on American soil. Indeed, U.S. judges appear to have repurposed the presumption for ends unrelated to its original usage.

The presumption against extraterritoriality, and consequently the practice of the United States, is woefully misaligned with contemporary international law and its progressive trajectory. As states across the world pursue perpetrators or facilitators of atrocities and human rights violations irrespective of the place of their commission, the U.S. Supreme Court maintains a regressive approach in curtailing the ATS's reach. Whether reflecting an antiquated understanding of international law, or simply a brazen indifference thereto, U.S. courts are preventing the country from fully participating in the global endeavor of international justice and accountability, which is a matter of both obligation and right under the contemporary international legal framework. The judiciary's perilous approach risks both placing the United States in breach of international law and undermining its political authority on the global stage.